STATE OF MICHIGAN

COURT OF APPEALS

ST. MARY'S MEDICAL CENTER OF SAGINAW, INC.,

Plaintiff-Appellee,

v

HEIRS OF WILLIAM A. CARPENTER, HEIRS OF AMANDA CARPENTER, HEIRS OF CHARLES BYRUM, and HEIRS OF HARRIET BYRUM,

Defendants-Appellants,

and

HEIRS OF THOMAS W. LOCKWOOD and HEIRS OF ALBERTINE LOCKWOOD,

Defendants/Third-Party Plaintiffs-Appellants,

-v-

VASSAR PUBLIC SCHOOLS,

Third-Party Defendant-Appellee.

UNPUBLISHED
November 30, 2001

No. 225463
Tuscola Circuit Court
LC No. 99-017886-CH

Before: White, P.J., and Talbot and E.R. Post*, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment granting summary disposition for plaintiff under MCR 2.116(C)(9) and quieting title to certain real property plaintiff wished to purchase from third-party defendant Vassar Schools. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

---

* Circuit judge, sitting on the Court of Appeals by assignment.

In 1859, defendants' ancestors conveyed a parcel of property to the Vassar school district. Defendants brought this quiet title action when plaintiff sought to purchase the property from the school district in 1998. The 1859 deed provided in part:

> This Indenture, Made . . . Between [defendants' ancestors] . . . of the first part, and the Trustees and their successors in office of [Vassar Public Schools] of the second part, Witnesseth That We said parties of the first part, for and in consideration of the sum of One Dollar *(and that the hereinafter described – be used for School purposes and no other)* to them in hand paid . . . do grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and to their Successors in Office forever, [the described property].
>
> Together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title interest, claim and demand whatsoever of the said parties of the first part . . . . [Emphasis added.]

Defendants' position was that, in light of the clause stating that the property was to be used only for school purposes, the grantors conveyed either a conditional fee or made a common-law dedication with a reversionary interest in defendants' favor once the land ceased being used for school purposes. Plaintiff moved for summary disposition under MCR 2.116(C)(9). Together with the school district, it argued that the clause was merely a statement of purpose and did not convey a conditional fee or create a future interest. Plaintiff also maintained that a school district could not be the grantee of a common-law dedication. The trial court agreed with plaintiff and entered a judgment quieting title declaring that defendants have no interest in the property.

On appeal, defendants first contend that the trial court erred in concluding that the 1859 deed was not a common-law dedication of property for public use. Common-law dedication of land for a public purpose requires (1) an intent by the property owners to offer the land for public use, (2) acceptance of the offer by public officials, and (3) use by the public generally. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 554; 600 NW2d 698 (1999). Common-law dedication only creates an easement in the public and does not convey fee title. *Kalkaska v Shell Oil Co (After Remand)*, 433 Mich 348, 354; 446 NW2d 91 (1989).

Actions to quiet title are equitable in nature and are subject to review de novo. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). Here, the trial court incorrectly concluded that land may not be dedicated for school use. Although there are no reported Michigan decisions precisely on point, other jurisdictions have held that property may be dedicated to a public school district for school uses. See 23 Am Jur 2d, Dedication, § 6, p 8; 68 Am Jur 2d, Schools, § 82, pp 379-380. When property is dedicated to school use and the purposes of the dedication fail, the land typically reverts to the grantor. *Id.* at § 89, pp 385-386.

Nevertheless, the trial court reached the right result. The intent element of common-law dedication requires a clear and positive intent to dedicate, as unequivocally demonstrated by the actions of the owners. *Boone v Antrim Co Bd of Rd Comm'rs*, 177 Mich App 688, 693; 442

NW2d 725 (1989). In this case, the express language of the deed negates a finding of such clear, positive, or unequivocal intent. While the deed implies that the land was conveyed for the consideration of one dollar and the promise to use the land for school purposes, it also recites that the grantors conveyed the land, along with "all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title interest, claim and demand whatsoever . . . ." This language does not suggest an intent to convey an easement in the public or a fee subject to reversion to the grantors, that is, a dedication. Instead, it plainly states that the grantors were relinquishing any reversionary interest in the land. In the absence of a clear and unequivocal intent to dedicate, we reject defendants' dedication argument.

Defendants further argue that the trial court erred in concluding that the deed did not convey a determinable fee with a possibility of reverter. We also reject this argument. When a fee simple estate is subject to divestment upon the happening of a condition, it is referred to as either a fee simple determinable or fee simple subject to condition subsequent. 1 Cameron, Michigan Real Property Law, § 7.10, p 247. The special limitation characterizing the determinable fee is typically introduced by words such as "until," "during," and "so long as." *Id.*, p 250, quoting Keil & Wilks, *Possibilities of Reverter and Powers of Termination in Michigan,* 37 U Det LJ 284,285 (1959). With a fee simple subject to a condition subsequent, the grantor's intent to have a right to re-enter upon the occurrence of a stated condition normally includes the words "upon the express condition that," or "provided that," or like language. *Id.*

Deeds on condition subsequent and determinable fees are strictly construed by the courts, and defeasance is not favored. Cameron, *supra*, p 252. In the absence of the limiting or conditional words and phrases, a statement of the purpose of the conveyance usually does not indicate an intent to create either a fee simple determinable or fee simple subject to subsequent condition. 1 Restatement Property, § 44, p 129; § 45, p 143. With regard to determinable fees, the Restatement illustrates:

> A, owning Blackacre in fee simple absolute, transfers Blackacre "to B and his heirs to and for the use of the C Church and for no other purpose." B has an estate in fee simple absolute and not an estate in fee simple determinable. [§ 44, p 130.]

With regard to fees simple subject to subsequent condition, the Restatement illustrates:

> A, owning Blackacre in fee simple absolute, transfers Blackacre "to B (an appropriate county official) and his heirs and successors, to be used as and for a county high school ground." B does not have an estate in fee simple subject to a condition subsequent.
>
> A, owning Blackacre in fee simple absolute, transfers Blackacre "to B and his heirs in further consideration that the said grantee shall keep on said property a first class hotel, and shall not use the property for any other purpose than the hotel business." B has an estate in fee simple absolute. [§ 45, p 143.]

In *Quinn v Pere Marquette Ry Co,* 256 Mich 143, 146-147; 239 NW 376 (1931), the case relied on by the trial court, the railroad purchased a strip of land for one dollar and the grantor

conveyed the strip "to be used for railroad purposes only." Consistent with the Restatement, the Court concluded that in the absence of a reverter clause (more accurately, a right of re-entry), there was no limitation on the railroad's fee title to the property because the declaration was merely a statement of purpose. *Id.*, p 151.

Applying these authorities to the present case, the trial court correctly determined that the grantors conveyed a fee simple absolute rather than a determinable fee with the possibility of reverter. The "for school purposes only" language, without additional language expressing a condition, was insufficient to create a determinable fee. Instead, it was a mere statement of purpose. *School Dist No Five of Delhi v Everett*, 52 Mich 314; 17 NW 926 (1883), and *Greenwood v School Dist No 4 of Napoleon Twp*, 126 Mich 81; 85 NW 241 (1901), do not require a different result. The words of conveyance in those cases, unlike the deed in this case, contained the conditional language, "for and during," *School Dist No Five, supra*, p 316, and "as long as," *Greenwood, supra*, p 83, associated with determinable fees. Accordingly, the Vassar Public Schools had a fee simple absolute and defendants had no reversionary interest in the property.

Affirmed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Edward R. Post